

This letter concerns the tax reporting requirements for sellers of ATVs and off-road motorcycles. See 86 Ill. Adm. Code 130.540. (This is a GIL.)

June 20, 2008

Dear Xxxxx:

This letter is in response to your letter received by our office on April 3, 2007, in which you request information. We apologize for the delay in responding to your inquiry. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at [www.ILTAX.com](http://www.ILTAX.com) to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

Buy Here, Pay Here Financing Program/Dealer Agreement

This document describes the arrangements that will be made between a proposed buy here/pay here financing program and potential franchise dealers.

We plan to place units, where ownership is maintained by our company based in STATE, on the dealership's floor offered for sale by us. Units will be sold on a monthly payment plan basis, and compensation will be paid [sic] to the dealership based upon each sale as a commission payment. All monies collected from customer will be paid directly to us, billed by us, and collected by us. The dealer's only responsibility will be delivery of unit and collection of customer's signatures for all contract paperwork between our company and the customer. Payments will be made directly to our company in STATE.

Before this program is executed, we need ensure [sic] proper procedures are followed concerning these specific issues:

1. Payment of sales tax  
When is sales tax due? Since this is a monthly payment plan on the vehicle, we need to ensure that we can pay sales tax as the payments are received, on a monthly basis, and not the sales tax of the total sale price.
2. Who is responsible for paying sales tax

It is our understanding that since we will be maintaining ownership of inventory; billing and collecting money for all sale contracts, that we are responsible for paying the sales tax, not the dealer. Is this true?

3. In some states we operate our program all atv and dirt bikes are registered. In these states we charge no sales tax and the customer pays their sales tax at the time of registration. Does this apply to your state?

We would appreciate an emailed or written response on which of the above applies to your state for our circumstances. Listed below is our contact information.

## **DEPARTMENT'S RESPONSE:**

The Illinois Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. See 86 Ill. Adm. Code 130.101. In Illinois, Use Tax is imposed on the privilege of using, in this State, any kind of tangible personal property that is purchased anywhere at retail from a retailer. See 86 Ill. Adm. Code 150.101. These taxes comprise what is commonly known as "sales" tax in Illinois. If the purchases occur in Illinois, the purchasers must pay the Use Tax to the retailer at the time of purchase. The retailers are then allowed to retain the amount of Use Tax paid to reimburse themselves for their Retailers' Occupation Tax liability incurred on those sales. If the purchases occur outside Illinois, purchasers must self assess their Use Tax liability and remit it directly to the Department.

Without review of the contractual obligations between your company and the dealers we cannot provide you with specific information regarding which of these parties is actually making the sales of the items being sold. The person (business) actually making the retail sales of the items is the one with the Retailers' Occupation Tax liability.

Most retailers file returns and pay tax on a monthly basis depending upon their specific situations. See 86 Ill. Adm. Code 130.501. Such monthly returns and corresponding tax payments are due on or before the 20<sup>th</sup> day of the following month.

Sales of motor vehicles, watercraft, aircraft, and trailers that are required to be registered with an agency of this State, and implements of husbandry or special mobile equipment for which the purchaser intends to apply for an optional title, are reported on transaction reporting returns. See 86 Ill. Adm. Code 130.540. Such transaction reporting returns are due no later than 20 days after delivery of the item being sold. All tax is due in regards to a sale reported on a transaction reporting return at the time of the filing of that return.

It is the Department's position that a retailer making a sale of an all terrain vehicle (ATV) or off-road motorcycle (dirt bike) should complete and file a Form ST-556 for that sale. Treating the sale of an ATV or off-road motorcycle as any other sale of tangible personal property and reporting the sale on a ST-1 may result in the collection and payment of taxes at an incorrect rate because of local retailers' occupation taxes.

A number of local retailers' occupation taxes administered by the Department impose taxes upon persons engaged in the business of selling tangible personal property at retail, other than an item of tangible personal property titled or registered with an agency of State government. See, for example 65 ILCS 5/8-11-1-1.1, 65 ILCS 5/8-11-1.3 and 65 ILCS 5/8-11-1.6. The Motor Vehicle Code requires every owner of an ATV purchased on or after January 1, 1998, to make application to the Secretary of State for a certificate of title. See 625 ILCS 5/3-101(d). The Motor Vehicle Code

requires every owner of a motorcycle or motor driven cycle purchased new on and after January 1, 1980 to make application to the Secretary of State for a certificate of title. See 625 ILCS 5/3-101(b).

The Form ST-556 provided by the Department will reflect the correct retailers' occupation tax rate for the jurisdiction in which the ATV or off-road motorcycle is sold. By use of Form ST-556, the retailer will collect and remit to the Department the correct retailers' occupation taxes on the sale of an ATV or off-road motorcycle.

The Department recently updated the Illinois Aircraft/Watercraft and Vehicle Tax Information Guide (ST-76). The Guide is available on the Department's website. The Guide is very helpful and addresses issues raised in your letter and many other related issues.

I hope this information is helpful. If you require additional information, please visit our website at [www.ILTAX.com](http://www.ILTAX.com) or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Terry D. Charlton  
Senior Counsel, Sales & Excise Taxes

TDC:msk